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SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**IN THE MATTER OF THE REQUEST
FOR AGENCY ACTION OF HARVEST
(US) HOLDINGS, INC. FOR AN ORDER
FORCE POOLING THE INTERESTS OF
CERTAIN NON-CONSENTING
OWNERS IN CERTAIN 40-ACRE OR
EQUIVALENT DRILLING UNITS
WITHIN SECTIONS 29 AND 20, T4S
R2W, USM, DUCHESNE COUNTY,
UTAH**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

(Forced Pooling)

Docket No.: 2009-005

Cause No.: 266-02

This cause came regularly for hearing before the Board of Oil, Gas and Mining (the “Board”) on Wednesday, October 28, 2009, at 9:00 a.m., in the Multipurpose Room of the Utah Applied Technology Center at 450 N. 2000 W. in Vernal, Utah. The following Board members were present and participating in the hearing: Chairman Douglas E. Johnson, Ruland J. Gill, Jr., James T. Jensen, and Kelly L. Payne. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner Harvest (US) Holdings, Inc. (“Harvest”) in the hearing were Gil S. Porter, Manager of Lands, Harvest Natural Resources, Inc., and Pat Oenbring, Vice President-Operations, Harvest Natural Resources, Inc. James P. Allen, Esq. of Snell & Wilmer L.L.P. appeared as counsel for Harvest.

Gil Hunt, Associate Director, Oil & Gas, testified on behalf of the Division of Oil, Gas and Mining (the “Division”). Steven F. Alder, Esq., Assistant Attorney General appeared as

counsel for the Division. At the conclusion of Harvest's presentation the Division presented its analysis and expressed its support for the Request.

El Paso E&P Company and El Paso Oil & Gas Resources Company ("El Paso"), represented by Phillip Wm. Lear, Esq. of Lear & Lear L.L.P. filed a Response and Objections to the Request. Subsequently, El Paso moved to withdraw, and the Board granted the Motion on April 22, 2009. Newfield Production Company, represented by Thomas W. Clawson of Van Cott, Bagley, Cornwall & McCarthy, also filed a Response and Objections to the Request. At the hearing, Newfield moved to withdraw its Objection.

NOW THEREFORE, the Board, having fully considered the testimony adduced, the exhibits received, and arguments made at the hearing, and being fully advised in the premises, makes and enters its Findings of Fact, Conclusions of Law, and Order, as follows:

FINDINGS OF FACT

1. The Board mailed notice of the hearing to interested parties on March 3, 2009, and caused notice to be published in *The Salt Lake Tribune* and *Deseret Morning News* on March 1, 2009, and in the *Uintah Basin Standard* on March 3, 2009.

2. Harvest mailed by certified mail, return receipt requested, photocopies of the Request for Agency Action on February 10, 2009, to the last known address of all unleased mineral interests owners whose interests were sought to be force-pooled.

3. The lands affected by Harvest's application for forced pooling are situated in Duchesne County, Utah, and are more particularly described as follows:

Township 4 South, Range 2 West, U.S.M.

Section 20: W 1/2

Section 29: N 1/2 NW 1/4, Lot 3, Lot 4

(hereinafter “**Subject Lands**”). The mineral estate underlying the 40-acre drilling units constituting the Subject Lands is owned by multiple parties as undivided interests in one tract encompassing the entire section. Harvest has obtained oil and gas leases from owners holding 82.4360 percent of the mineral interest in section 29, and has secured agreements to participate from owners holding another 2.8997 percent of the mineral interest. Newfield has obtained leases from owners holding 14.6425 percent of the mineral interest in section 29.

4. By the time the hearing was held, Harvest and Newfield, together, had secured leases or agreements to participate in costs from owners together holding 100 percent of the mineral interest in section 20.

5. The Board previously established the Subject Lands as 40-acre drilling units or substantial equivalent in the Green River Formation, in Cause No. 266-01.

6. There are currently no producing wells on the Subject Lands. Under agreement with Harvest, Newfield has proposed to drill the Moon #1-29-4-2, Moon #2-29-4-2, Moon #3-29-4-2, and Moon #4-29-4-2 wells in drilling units corresponding to Lot 4, Lot 3, the NW1/4 NW1/4, and the NE1/4 NW1/4 of section 29, and the Moon #1-20-4-2, Moon #2-20-4-2, Moon #3-20-4-2, and Moon #44-20-4-2 in drilling units corresponding to the SW1/4 SW1/4, SE1/4 SW1/4, NW1/4 SW1/4, and NE1/4 SW1/4 of Section 20, T4S, R2W, U.S.M. (“**Subject Wells**”).

7. Harvest sent written notices on or about January 15, 2009 to the unleased mineral owners sought to be force pooled at their last known addresses, inviting such owners to either lease or participate in the Subject Wells. Harvest sent subsequent written notices providing information regarding drilling costs and operating agreement terms to each unleased owner.

8. As of the date of the hearing, Laurence Scott Noble, owning an undivided mineral interest in Section 29, has not responded by either leasing his interest or agreeing to participate in the Subject Wells. Mr. Noble's interest comprises 0.0218 percent, more or less, of the mineral interest in the Subject Wells in Section 29. The weighted average royalty for each drilling unit in Section 29 is 16.6305 percent.

9. A reasonable interest charge of the Prime Rate plus 2% was established. The "**Prime Rate**" is defined as the prime rate reported by Wells Fargo Bank in Salt Lake City, or, if Wells Fargo Bank ceases to exist or to report a prime rate, then the Prime Rate shall be the prime rate reported by a comparable bank operating in the State of Utah.

10. Harvest provided testimony that the estimated plugging and abandoning costs for the Subject Wells are \$60,500 per well.

11. The A.A.P.L. Form 610—1982 Model Form Operating Agreement ("**JOA**") contains provisions appropriate to govern the relationship between the operator and the consenting and Nonconsenting Owners, as to those terms and conditions not inconsistent with these Findings of Fact, Conclusions of Law, and Order. The JOA is attached to these Findings of Fact, Conclusions of Law, and Order as **Exhibit "A."**

12. The risks and costs of drilling the Subject Wells support the imposition of the risk compensation award (nonconsent penalty) herein provided.

13. Harvest has in good faith attempted to reach agreement with Nonconsenting Owners to either lease their interests or obtain agreement to bear their proportionate share of the costs of the Subject Wells.

14. Forced pooling of the Nonconsenting Owner's interests in the drilling units for the Subject Lands will promote the public interest, increase ultimate recovery, prevent waste, and protect the correlative rights of all owners.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the parties and of the subject matter of Harvest's Request for Agency Action, pursuant to Chapter 6.5 of Title 40 of the *Utah Code Annotated*.

2. The Board gave due and regular notice of the time, place, and purpose of the hearing to all interested parties as required by law and by the rules and regulations of the Board.

3. Harvest properly served all owners entitled to notice by mailing copies of the Request for Agency Action to those owners having legally protected interests.

4. Pursuant to Utah Admin. Code R. 649-2-9, Nonconsenting Owner Laurence Scott Noble is deemed to have refused to bear his proportionate share of the costs of the four Subject Wells located in Section 29 of the Subject Lands.

5. Laurence Scott Noble is a "Nonconsenting Owner" as such term is defined in Utah Code Annotated § 40-6-2(11).

6. Harvest has fully complied with the Board requirements contained in R649-2-9 of the *Utah Administrative Code* to make good faith offers to nonconsenting owners to lease or otherwise bear their proportionate share of costs of drilling and completing the Subject Wells prior to force pooling those interests for common development.

7. A 300% risk compensation award (nonconsent penalty) is appropriate for the Subject Wells.

8. The Request for Agency Action and evidence adduced at the hearing establish the need for forced pooling upon terms that are just and reasonable.

9. Pooling the interests of all owners with the Nonconsenting Owner in this case will prevent waste of the oil and gas resources, maximize the potential for ultimate production of those resources, and protect the correlative rights of all owners, including Harvest, to their just and equitable shares of the pool.

ORDER

IT IS THEREFORE ORDERED that to promote the public interest, to increase the ultimate recovery of the resources, to prevent physical waste of oil, gas, and associated hydrocarbons, and to protect the correlative rights of all owners:

1. Harvest's Request for Agency Action seeking forced pooling of the Nonconsenting Owner's interests in the Subject Wells is granted with respect to the Subject Wells in Section 29 of the Subject Lands. That portion of the Request for Agency Action seeking forced pooling of interests in the Subject Wells located in Section 20 of the Subject Lands is dismissed.

2. The Motion of Newfield Production Company to Withdraw its objection to the Request for Agency Action is granted.

3. Drilling operations on any portion of a drilling unit covered by this Order shall be deemed for all purposes to be the conduct of operations upon each separately owned tract in the drilling unit by the several owners.

4. Production allocated or applicable to any separately owned tract included in a drilling unit covered by this Order shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on it.

5. The Nonconsenting Owner's interests hereby force pooled are identified as the undivided interests of Laurence Scott Noble to oil, gas, and associated hydrocarbons produced from any of the Subject Wells drilled within section 29, T4S, R2W, U.S.M. comprising an undivided 0.0218 percent, more or less, of the total mineral interest. Notwithstanding, Harvest should be allowed, in its discretion, to enter into leases with any Nonconsenting Owner who wishes to do so after issuance of the Board's Order herein, without the need of further petitions, hearings or Board approvals, and to treat such owners thereafter as lessees instead of Nonconsenting Owners.

6. The Nonconsenting Owner's interests shall be deemed relinquished to the consenting owners during the period of payout for the drilling unit Subject Wells in Section 29, as provided in Utah Code Ann. § 40-6-6.5(8). The relinquishment does not constitute a defeasance of title to the Nonconsenting Owner's interest in the mineral estate, but rather the relinquishment of the revenue stream attributable to the Nonconsenting Owner's allocated share during the period of payout, after payment of the royalty provided herein.

7. Each owner shall pay his allocated share of the costs incurred in drilling and operating the Subject Wells, including, but not limited to, the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities, reasonable charges for administration and supervision of operations, and other costs customarily

incurred in the industry (the accounting for which shall be governed by the terms of the JOA in Exhibit A attached hereto).

8. The Nonconsenting Owner shall be entitled to receive, subject to the royalty specified herein, the share of the production of the Subject Well applicable to such owner's interest in the drilling unit after the consenting owners have recovered the following from the Nonconsenting Owner's share of production: (1) 100% of the Nonconsenting Owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping; (2) 100% of the Nonconsenting Owner's share of the estimated costs of plugging and abandoning the Subject Well, which estimated costs are and shall be \$60,500.00; (3) 100% of the Nonconsenting Owners' share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered all costs; and (4) a penalty of 300% of the Nonconsenting Owner's share of the costs of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing, and completing, and the cost of equipment in the Subject Well to and including the wellhead connections, as such costs are delineated in Utah Code Ann. § 40-6-6.5(4)(d). The Nonconsenting Owner's share of costs is that interest that would have been chargeable to the Nonconsenting Owner had such owner initially agreed to pay such owner's share of the costs of the Subject Wells from the commencement of operations. In addition, a reasonable interest rate of the Prime Rate plus 2 percent as defined herein shall be imposed pursuant to Utah Code Annotated § 40-6-6.5(4)(d)(iii).

9. The Nonconsenting Owner shall receive a royalty equal to the average landowner's royalty of 16.6305 percent. When calculating the division of interest for each Nonconsenting Owner, the average landowner's royalty shall be proportionately reduced in the ratio that the Nonconsenting Owner's interest bears to (1) the total interest in the tract and (2) then further reduced in the ratio that the tract acres bear to the total acreage in the drilling unit. The 16.6305 percent royalty shall be paid to the Nonconsenting Owner until such time as such Nonconsenting Owner's share of costs, the 300 percent penalty, and applicable interest charges have been fully recouped, as provided in Utah Code Ann. § 40-6-6.5 and in this Order.

10. Upon payout of the Subject Wells on the drilling unit, the Nonconsenting Owner's relinquished interest shall automatically revert to him, and the Nonconsenting Owner shall from that time forward own the same interest in the well and the production from it, and shall be liable for the further costs of operation, as if such owner had participated in the initial drilling and completion operations. Costs of operations after payout attributable to a Nonconsenting Owner shall be paid out of production.

11. Payout occurs when the consenting owners who participate in the costs of drilling and completing a well in a drilling unit recoup from the Nonconsenting Owner the costs and expenses of drilling and completing the Subject Wells, together with the risk compensation award (nonconsent penalty) and interest, as provided for herein

12. In any circumstance when the Nonconsenting Owner has relinquished such owner's share of production to consenting owners or at any time fails to take such owner's share of production in-kind when such owner is entitled to do so, the Nonconsenting Owner is entitled to an accounting of the oil and gas proceeds applicable to such owner's relinquished share of

production; and payment of the oil and gas proceeds applicable to that share of production not taken in-kind, net of costs.

13. The terms and conditions of the JOA (**Exhibit “A”**) shall control the relationship of the parties as to all matters not expressly identified in this order and to the extent not inconsistent with this Order. In the event any terms of the JOA shall conflict with the terms of this Order or Utah Code Ann. § 40-6-6.5, the terms of the statute or this Order, as applicable, shall control.

14. This Order is made and entered upon terms and conditions that are just and reasonable.

15. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-204 through 208, and of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

16. This Findings of Fact, Conclusions of Law, and Order (**“Order”**) is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board’s decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641–109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

17. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** The Board hereby notifies all parties to this proceeding that they have the right to seek

judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63G-4-403.

18. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63G-4-302 The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Utah Code Ann. § 63G-4-302.

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled “Rehearing and Modification of Existing Orders” state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Utah Admin. Code R641-110-100.

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the Order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

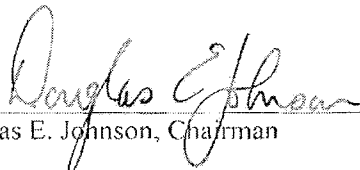
19. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

20. The Chairman's signature on a facsimile or electronic copy of this Order shall be deemed the equivalent of a signed original for all purposes.

21. The Vote of the Board Members hearing this matter was 3-1 in favor of granting the Request.

ENTERED this 30 day of November, 2009.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



Douglas E. Johnson, Chairman

Approved as to form:

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Attorney for Harvest (US) Holdings, Inc.

Approved as to form:

Steven F. Alder, Esq.
Attorney for Division of Oil, Gas and Mining

Approved as to form:

Michael S. Johnson, Esq.
Attorney for Board of Oil, Gas and Mining

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER for Docket No. 2009-005, Cause No. 266-02 to be mailed with postage prepaid, this 5th day of January, 2010, to the following:

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